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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,649	04/18/2006	Nikolaus Mendler	3580	5959
7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743				
07/16/2009				
EXAMINER				
LEE, YUN HAENG NMN				
ART UNIT		PAPER NUMBER		
3766				
MAIL DATE		DELIVERY MODE		
07/16/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/562,649

**Applicant(s)**

MENDLER, NIKOLAUS

**Examiner**

YUN HAENG LEE

**Art Unit**

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 May 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 9-15 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 18 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 5/6/09 have been fully considered but they are not persuasive. Applicant argues that the present invention is distinguishable from the blood pump of Izraelev because the rotor of the blood pump according to the present invention is open so that the blood is streaming through it whereas the Izraelev rotor is completely closed. The limitation of the rotor being open so that blood is streaming through it is not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Izraelev (US Pat. No. 5,685,700) (cited previously).

Regarding claim 9, Izraelev discloses a centrifugal pump (10), comprising a housing (11) which is disclosed in a fluid-and-gas-tight fashion except for at least one inlet opening (16, 17) and at least one outlet opening (18, 19); a pump rotor (20) located inside said housing rotatably and being simultaneously a rotor of a drive motor, said rotor having at least one permanently magnetized region (24), one stator (26, 27)

located outside said housing, above and below said rotor, so that said stators in a gap between said stators and said permanently magnetized region of said rotor, generate a magnetic flux, said rotor being arranged symmetrically to its central plane and having an upper and a lower covering (29, 30), an element selected from the group consisting of said rotor, said housing and both being shaped such that axial spaces between said upper and lower coverings and an upper and lower housing wall decrease continuously radially inwards (see fig. 4), in such a manner that in a radially inner region of said rotor, rotor side chambers each have one throttle gap which in operation affect a radially inwards-oriented backflows in said rotor side chambers such that upon an axial deflection of said rotor, different pressure distributions occur above and below said rotor, as a result of which forces acting on a predominant surface area of said coverings are generated with effect an axial stabilization of said rotor and are operative in a same way against tilting of said rotor in said housing; and said upper and lower coverings of said rotor having blades being disposed therebetween, outer surfaces of said upper and lower coverings being smooth (col. 6 lines 8-11).

Regarding claim 10, izraelev further discloses a centrifugal pump as defined in claim 9, wherein said rotor of said drive motor has a plurality of magnetized regions distributed uniformly over its circumference (24).

Regarding claim 11, Izraelev further discloses a centrifugal pump as defined in claim 9, wherein said rotor is arranged so that a radial centering of said rotor is effected by reluctance forces (col. 2 lines 56-59).

Regarding claim 12, Izraelev further discloses a centrifugal pump as defined in claim 9, wherein said rotor is composed entirely of a ferromagnetic material (col. 4 line 47).

Regarding claim 13, Izraelev further discloses a centrifugal pump as defined in claim 9, wherein parts of the centrifugal pump are configured so that at least their surfaces that are in fluid contact are provided with a coating (col. 4 line 61) adapted to properties of a fluid.

Regarding claim 14, Izraelev further discloses a centrifugal pump as defined in claim 9, wherein the centrifugal pump is configured as a blood pump that is implantable in a body (col. 3 lines 32-52).

Regarding claim 15, Izraelev further discloses a centrifugal pump as defined in claim 9, wherein said centrifugal pump is configured as a pump for blood in cardiac substitution or assist devices (col. 6 line 41).

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YUN HAENG LEE whose telephone number is (571)272-2847. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl H. Layno/  
Supervisory Patent Examiner, Art Unit 3766

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/YHL/